

SENATE BILL No. 155

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-8-3.2.

Synopsis: Bail procedures. Requires a court to release a defendant whose most serious charge is a misdemeanor or a Level 6 felony on the defendant's own recognizance unless the defendant: (1) is charged with a crime of domestic violence, a violent crime, or a sex offense; (2) has previously failed to appear before the court as ordered; (3) is a sex or violent offender; (4) has been convicted of a misdemeanor within the previous five years or of a Level 6 felony within the previous 10 years; or (5) has been convicted of murder or a Level 5 or greater felony at any time.

Effective: July 1, 2016.

Steele

January 5, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 155

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-33-8-3.2, AS AMENDED BY P.L.35-2012,
2 SECTION 107, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2016]: Sec. 3.2. (a) **Except as provided in**
4 **subsection (g)**, a court may admit a defendant to bail and impose any
5 of the following conditions to assure the defendant's appearance at any
6 stage of the legal proceedings, or, upon a showing of clear and
7 convincing evidence that the defendant poses a risk of physical danger
8 to another person or the community, to assure the public's physical
9 safety:
10 (1) Require the defendant to:
11 (A) execute a bail bond with sufficient solvent sureties;
12 (B) deposit cash or securities in an amount equal to the bail;
13 (C) execute a bond secured by real estate in the county, where
14 thirty-three hundredths (0.33) of the true tax value less
15 encumbrances is at least equal to the amount of the bail;
16 (D) post a real estate bond; or
17 (E) perform any combination of the requirements described in



- 1 clauses (A) through (D).
2 If the court requires the defendant to deposit cash or cash and
3 another form of security as bail, the court may require the
4 defendant and each person who makes the deposit on behalf of the
5 defendant to execute an agreement that allows the court to retain
6 all or a part of the cash to pay publicly paid costs of
7 representation and fines, costs, fees, and restitution that the court
8 may order the defendant to pay if the defendant is convicted. The
9 defendant must also pay the fee required by subsection (d).
10 (2) Require the defendant to execute:
11 (A) a bail bond by depositing cash or securities with the clerk
12 of the court in an amount not less than ten percent (10%) of
13 the bail; and
14 (B) an agreement that allows the court to retain all or a part of
15 the cash or securities to pay fines, costs, fees, and restitution
16 that the court may order the defendant to pay if the defendant
17 is convicted.
18 A portion of the deposit, not to exceed ten percent (10%) of the
19 monetary value of the deposit or fifty dollars (\$50), whichever is
20 the lesser amount, may be retained as an administrative fee. The
21 clerk shall also retain from the deposit under this subdivision
22 fines, costs, fees, and restitution as ordered by the court, publicly
23 paid costs of representation that shall be disposed of in
24 accordance with subsection (b), and the fee required by
25 subsection (d). In the event of the posting of a real estate bond,
26 the bond shall be used only to insure the presence of the
27 defendant at any stage of the legal proceedings, but shall not be
28 foreclosed for the payment of fines, costs, fees, or restitution. The
29 individual posting bail for the defendant or the defendant
30 admitted to bail under this subdivision must be notified by the
31 sheriff, court, or clerk that the defendant's deposit may be
32 forfeited under section 7 of this chapter or retained under
33 subsection (b).
34 (3) Impose reasonable restrictions on the activities, movements,
35 associations, and residence of the defendant during the period of
36 release.
37 (4) Except as provided in section 3.6 of this chapter, require the
38 defendant to refrain from any direct or indirect contact with an
39 individual and, if the defendant has been charged with an offense
40 under IC 35-46-3, any animal belonging to the individual,
41 including if the defendant has not been released from lawful
42 detention.



(5) Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

(8) Require a defendant charged with an offense under IC 35-46-3 to refrain from owning, harboring, or training an animal.

(9) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) from each bond or deposit required under subsection (a)(1); and

(2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the Indiana public retirement system for deposit in the special death benefit fund. The fee required



by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2).

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

(g) This subsection applies only to a defendant whose most serious charge is a misdemeanor or a Level 6 felony (or a Class D felony for a felony offense committed before July 1, 2014). This subsection does not apply to the following:

(1) A defendant charged with a crime of domestic violence.

(2) A defendant charged with committing a violent crime (as defined in IC 5-2-6.1-8).

(3) A defendant who has previously failed to appear before a court as ordered.

(4) A defendant charged with a sex offense (as defined in IC 11-8-8-5.2).

(5) A defendant who is a sex or violent offender (as defined in IC 11-8-8-5).

(6) A defendant who has been convicted of a misdemeanor within the previous five (5) years.

(7) A defendant who has been convicted of a Level 6 felony (or a Class D felony for an offense committed before July 1, 2014) within the previous ten (10) years.

(8) A defendant who has been convicted of:

(A) murder;

(B) a Level 5 felony, Level 4 felony, Level 3 felony, Level 2 felony, or Level 1 felony; or

(C) a Class C felony, Class B felony, or Class A felony (for an offense committed before July 1, 2014);

at any time.

The court shall release on personal recognizance a defendant to whom this subsection applies.

